

# SHORTER MIKE AND MIKE: NO, WE DON'T WANT IMMUNITY CONTINGENT ON ACTUALLY FINISHING THE IG REPORT

I think I've given as much consideration to what it would take to have a meaningful study of what the Administration did with its illegal wiretapping program as anyone (though also see this piece on immunity from Brian Beutler, one of the last pieces he did before he got shot last week). And I gotta say—the fact that DNI Mike McConnell and AG Michael Mukasey claim they'd advise Bush to veto the bill if it included Jeff Bingaman's amendment—holding off on giving the telecoms immunity until after the IG study mandated by the bill was completed—makes me rather suspicious that Bush intends to spike the IG investigation (h/t Spencer).

As we have previously noted, any FISA modernization bill must contain effective legal protections for those companies sued because they are believed to have helped the Government prevent terrorist attacks in the aftermath of September 11, 2001.

[snip]

H.R. 6304 contains such protection, but the amendment would reportedly foreclose an electronic communication service provider from receiving retroactive [immunity] until 90 days after the Inspectors General of various departments, as required by section 301 of H.R. 6304, complete a comprehensive review of, and submit a final report on, communications intelligence activities

authorized by the President between September 11, 2001, and January 17, 2007. The final report is not due for a year after the enactment of the bill. Any amendment that would delay implementation of [immunity] in this manner is unacceptable. Providing prompt liability protection is critical to the national security. Accordingly, we, as well as the President's other advisors, will recommend that the President veto any bill that includes such an amendment.

Now, I'd be charitable and buy Mike and Mike's claim that they're just worried about a delay. Except that they make this completely cynical bid to suggest that the SSCI's review of the program was adequate to expose what really happened with this program.

Deferring a final decision on retroactive [immunity] for 15 months while the Inspectors General complete the review required by H.R. 6304 is also unnecessary. The Senate Intelligence Committee conducted an extensive study of the issue, which included the review of the relevant classified documents, numerous hearings, and testimony. After completing this comprehensive review, the Committee determined that providers had been authorized by the President and had been determined to be lawful, and that the providers "had a good faith basis" for responding to the requests for assistance they received.

Muaksey learned his cynical lessons on language from Orwell well, huh? They parrot not only the language used by the bill—"had been determined to be legal"—to grant immunity even though the DOJ could not certify the program as legal, but they also parrot the word—"comprehensive"—used in the FISA bill to describe the IG investigation. But it's not entirely clear to me

whether SSCI has seen all the things that the IGs would see. Here's what the IG investigation is supposed to review:

- (A) all of the facts necessary to describe the establishment, implementation, product, and use of the product of the Program;
- (B) access to legal reviews of the Program and access to information about the Program;
- (C) communications with, and participation of, individuals and entities in the private sector related to the Program;
- (D) interaction with the Foreign Intelligence Surveillance Court and transition to court orders related to the Program; and
- (E) any other matters identified by any such Inspector General that would enable that Inspector General to complete a review of the Program, with respect to such Department or element.

And it's also supposed to include the results of the DOJ OPR review—which of course, thanks to the obstruction of George Bush—hadn't been restarted yet when the SSCI conducted its "comprehensive" review in early fall 2007.

The Counsel of the Office of Professional Responsibility of the Department of Justice shall provide the report of any investigation conducted by such Office on matters relating to the Program, including any investigation of the process through which legal reviews of the Program were conducted and the substance of such reviews, to the Inspector General of the Department of Justice, who shall integrate the factual findings and conclusions of such investigation into its review.

So we know that—at the very least—the IG investigation will have reviewed John Yoo's role in this process, whereas SSCI has not done so. You think maybe there's something that OPR found but is hiding (and on that note, here's the LAT's recent discovery of something I covered last year—that OPR never has to reveal the results of its investigations)? Mike and Mike don't want you and I to find out what that is until after McConnell's former buddies in the privatized spying racket get their immunity.

And, too, though Mike and Mike don't want to say it, they also don't want us to have any leverage over both the telecoms and the Administration(s) to make sure we get our IG review. Telecom immunity, after all, is a pretty fucking big carrot. We're way more likely to get what we want out of them—timely cooperation and security clearances—if we withhold that carrot until we get what we want.

But Mike and Mike, for some reason, are dead set against that happening.